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September 19, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

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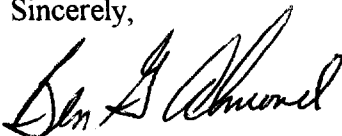
RE: CC Docket 94-54 Equal Access and Interconnection Obligations Pertaining to  
Commercial Mobile Radio Services (CMRS)  
Ex Parte Presentation

Dear Mr. Caton:

In accordance with the requirements of Section 1.1200 et. seq. of the Commission's Rules, you are hereby notified that on September 19, 1994, William B. Barfield, Ernest L. Bush, Charles P. Featherstun and Ben G. Almond, all of BellSouth Corporation met with John Cimko, Jr., Myron C. Peck, Judith Argentieri and Nancy Boocker; all of the Mobile Services Branch in the Commission's Common Carrier Bureau. During the meeting we discussed issues concerning LEC resell of cellular service provided either by the cellular subsidiary or an unaffiliated licensee as referenced in BellSouth's comments filed for the proceeding indicated above.

The attached document was provided during the presentation. The document was also delivered to the office of Gerald P. Vaughan of the Commission for his review and future anticipated meeting for BellSouth Corporation to discuss this subject with him. Please associate this material with the above referenced proceeding.

Sincerely,



Ben G. Almond  
Executive Director-Federal Regulatory

Attachment

cc: John Cimko, Jr.  
Myron Peck  
Judith Argentieri  
Nancy Boocker

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Summary of *Ex parte* presentation  
CC Docket No. 94-54  
Equal Access and Interconnection Obligations  
Pertaining to Commercial Mobile Services

This summarizes an *ex parte* presentation made by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth") with respect to resale of cellular service by the local exchange carriers owned by the Regional Bell Operating Companies ("Bell LECs").

In the *Notice of Proposed Rulemaking* in CC Docket 94-54, the Commission has proposed adopting a rule that would extend the current cellular resale policy to all commercial mobile services ("CMRS"). Thus, CMRS providers generally would not be permitted to restrict resale of their service. In its presentation, BellSouth urged the Commission to resolve an ambiguity concerning the resale of cellular service -- namely, that it is unclear whether the cellular structural separation rule, Section 22.901, permits the Bell LECs to resell cellular service.

The Commission's cellular structural separation rule permits a Bell company to "provide" cellular service only through a separate subsidiary. There is nothing in the rule, the decisions adopting it, or the case law indicating that the Commission intended to restrict a Bell LEC from reselling cellular service that is provided by either the cellular subsidiary or an unaffiliated licensee.

The rule was adopted to minimize the possibility of LEC cross-subsidization of cellular service and to facilitate interconnection. Thus, the rule ensures that LEC computer and transmission facilities (other than facilities available to all) may not be used for providing cellular service, and provides for separate officers, personnel, and books of account. To further prevent cross-subsidization, the rule provides that the LEC may not market cellular service "on behalf of" the cellular subsidiary -- *i.e.*, the LEC may not act as the sales agent of the cellular subsidiary.

If the cellular subsidiary fully complies with these requirements, no regulatory purpose would be served by forbidding the Bell LEC from purchasing cellular service provided by the separate subsidiary at the same price and on the same terms available to any other company and reselling it to the public. This provides no opportunity for cross-subsidy. The LEC and the cellular subsidiary will still maintain separate sales forces; the LEC's marketing personnel will market only resold service. Resale is not the facilities-based "provision" of cellular service to which the rule was directed. A reseller does not act "on behalf of" the underlying carrier; it acts on its own behalf, independent of the underlying carrier.

Interpreting the rule as restricting the Bell LEC from reselling cellular service would be contrary to the existing policy of not permitting restrictions on resale. Nevertheless, the rule is ambiguous, because a reseller is a "provider" of service to a certain extent. Given that the rule was directed toward separating *facilities-based* provision of cellular service from the LEC, however, BellSouth urges the Commission to make clear that the restriction on providing cellular service contained in the cellular separation rule does not restrict a BOC LEC's provision of cellular service solely as a non-facilities-based reseller.

The need for clarification of the rule could be avoided if the Commission eliminated the cellular separation rule. This was proposed in comments responding to the *Further Notice of Proposed Rulemaking* in GN Docket 93-252 (Bell Atlantic Comments at 7 & n.5 (June 20, 1994); BellSouth Reply Comments at 4-6 (July 11, 1994)). The *Third Report and Order* addressing these comments has been adopted but not yet released, and there is no indication whether the Commission has eliminated the rule. If the rule has been eliminated, the concerns expressed herein are rendered moot.

In addition, BellSouth has asked the Commission to eliminate the cellular structural separation requirement in its Comments on Further Reconsideration in the Broadband PCS proceeding, Gen. Docket 90-314 (filed August 30, 1994). BellSouth showed therein that the separate subsidiary rule violates the principle of regulatory parity, because it applies only to the Bell companies and governs only their provision of cellular service, not other types of CMRS such as paging, PCS, SMR, or non-cellular mobile telephone service. Moreover, the competitive nature of the CMRS and the ready availability of CMRS interconnection arrangements eliminates much of the basis for the rule.

While the Commission has said it plans to conduct further rulemaking on this issue (*see CMRS Second Report and Order*, Gen. Docket 93-252, at ¶¶ 218-19), there is no need for further proceedings, because the issue is already squarely before the Commission.

Attachments

### Vehicles for Authorizing RBOC LEC Cellular Resale

<ul style="list-style-type: none"> <li>• Eliminate § 22.901 Structural Separation Requirement</li> </ul>	<ul style="list-style-type: none"> <li>• Elimination of the rule moots issue without need for further proceedings                             <ul style="list-style-type: none"> <li>• Raised in comments on <i>Further Notice</i> in Gen. Docket 93-252 (Bell Atlantic Comments at 7, BellSouth Reply Comments at 4-6)</li> <li>• Raised in BellSouth Comments on Further Reconsideration in Gen. Docket 90-314</li> </ul> </li> <li>• In the <i>CMRS Second Report</i> in Gen. Docket 93-252, the Commission said it would consider eliminating rule in a further proceeding (§§ 218-19); if the Commission eliminates the rule in response to the above filings, a further proceeding would be unnecessary</li> </ul>
<ul style="list-style-type: none"> <li>• Interpret § 22.901 as Not Applying to Re-sale</li> </ul>	<ul style="list-style-type: none"> <li>• Interpretation of the rule can be accomplished in a pending proceeding (raised in BellSouth Comments in CC Docket 94-54 (CMRS Equal Access and Interconnection at 25-27) on two bases:                             <ul style="list-style-type: none"> <li>• § 22.901(d)(1) states that LEC "shall not engage in the sale or promotion of cellular services <i>on behalf of the separate corporation</i>" indicating that sale or promotion of cellular service as an arms-length reseller of service purchased on same terms as others, and not on behalf of the cellular sub, is not restricted</li> <li>• § 22.901(b) language stating RBOC "may engage in the <i>provision</i> of cellular service" only through cellular sub applies only to the facilities-based provision of service, not resale, consistent with purpose and intent of the rule</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Modify § 22.901 to Permit Resale</li> </ul>	<ul style="list-style-type: none"> <li>• Specific rule amendment would make clear that resale is permitted                             <ul style="list-style-type: none"> <li>• May be unnecessary, since this can be accomplished through interpretation</li> </ul> </li> </ul>